



Control Number: 51114



Item Number: 18

Addendum StartPage: 0

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DRAFT FINAL ORDER

MEETING DATE: December 17, 2020
DATE DELIVERED: December 16, 2020
AGENDA ITEM NO.: 16
CAPTION: Docket No. 51114 – Petition of Imperial Heights, LTD. to Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Harris County by Expedited Release
DESCRIPTION: Draft Final Order

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Governor

Public Utility Commission of Texas

TO: Chairman DeAnn T. Walker
Commissioner Brandy Arthur C. D'Andrea
Commissioner Shelly Botkin

All Parties of Record

FROM: Austin Spraez
Commission Advising

RE: *Petition of Imperial Heights, Ltd. To Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Harris County by Expedited Release*, Docket No. 51114, December 17, 2020 Open Meeting, Item No. 16.

DATE: December 16, 2020

Attached is a draft order to reflect the decision of the Commission at its November 5, 2020 open meeting. The order is posted for consideration at the open meeting currently scheduled for December 17, 2020.

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DOCKET NO. 51114

PETITION OF IMPERIAL HEIGHTS,	§	
LTD. TO AMEND AQUA TEXAS,	§	PUBLIC UTILITY COMMISSION
INC.'S CERTIFICATES OF	§	
CONVENIENCE AND NECESSITY IN	§	OF TEXAS
HARRIS COUNTY BY EXPEDITED	§	
RELEASE	§	

DRAFT ORDER

This Order addresses the petition by Imperial Heights, Ltd. for streamlined expedited release of a tract of land in Harris County from the service areas under certificates of convenience and necessity (CCN) number 13203 and number 21065. Aqua Texas, Inc. is the holder of CCN number 13203 and number 21065. For the reasons stated in this Order, the Commission releases the tract of land from Aqua Texas's certificated service area. In addition, the Commission amends Aqua Texas's CCN number 13203 and number 21065 to reflect the removal of the tract of land from the service area.

Following entry of this Order, the Commission will determine the amount of compensation, if any, to be awarded to Aqua, which will be addressed by separate order.

I. Discussion

The owner of a tract of land that meets certain conditions may petition to release the tract of land from the certificated service area of a retail public utility that holds a certificate of convenience and necessity.¹ If the tract of land is not receiving utility service, the landowner is entitled to the requested release.² However, the owner has no right to petition for decertification of, and the Commission has no authority to decertify, any facilities or equipment owned and operated by the CCN holder to provide retail water service or retail sewer service through the streamlined-expedited-release process under Texas Water Code § 13.2541. Consequently, if the CCN holder has any facilities or equipment that lay on or under the tract of land subject to the petition for streamlined expedited release, such facilities and equipment remain certificated to the CCN holder even though the tract of land is released from the certificated service area.

¹ See Tex. Water Code §§ 13.254, 13.2541 and 16 Tex. Admin. Code § 24.245(h).

² Tex. Water Code § 13.2541(b).

II. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. The petitioner is a limited partnership registered with the Texas secretary of state under filing number 803497557.

CCN Holder

2. Aqua Texas is a corporation registered with the Texas secretary of state under filing number 800304878.
3. Aqua Texas holds CCN number 13203 that obligates it to provide retail water service in its certificated service area in southeast Texas, including Harris County.
4. Aqua Texas holds CCN number 21065 that obligates it to provide retail sewer service in its certificated service area in southeast Texas, including Harris County.

Petition and Information Provided by Petitioner

5. On July 24, 2020, the petitioner filed a petition for streamlined expedited release of a tract of land from the CCN holder's service areas under CCN number 13202 and number 21065.
6. The petition includes the affidavit of Louis Trapolino, petitioner's development manager, a special warranty deed, a general location map, and two detailed property maps.
7. In Order No. 2 filed on August 31, 2020, the administrative law judge (ALJ) found the petition administratively complete.
8. On October 26, 2020, the petitioner filed exceptions to the proposed order filed by the ALJ on October 6, 2020 with the affidavit dated October 21, 2020 of Steven Perez, a professional engineer hired by petitioners, that includes two maps of the area around the tract of land.

Notice

9. The petitioner sent a copy of the petition by certified mail to the CCN holder on July 24, 2020.
10. In Order No. 2 filed on August 31, 2020, the ALJ found the notice sufficient.

Intervention and Response to Petition

11. In Order No. 2 filed on August 31, 2020, the ALJ granted the CCN holder's motion to intervene.
12. The CCN holder filed a response to the petition on September 18, 2020.
13. The response included the affidavit dated September 17, 2020 of Chris A. Garcia, the CCN holder's area manager for southeast Texas, with an attached map of the tract of land.

The Tract of Land

14. The tract of land for which the petitioner seeks expedited release is 37.8 acres and is in Harris County.
15. The petitioner's tract of land is located within the CCN holder's certificated service area for water service and its certificated service area for sewer service.
16. The tract of land is located within the City of Houston.
17. The tract of land is undeveloped but almost completely surrounded by fully developed residential neighborhoods.

Ownership of the Tract of Land

18. The petitioner was conveyed the tract of land by a special warranty deed dated July 8, 2019.

Qualifying County

19. Harris County has a population greater than one million people.

Water Service

20. The CCN holder does not provide actual water service to the tract of land.
21. The CCN holder provides retail water service to a subdivision adjacent to and south and west of the tract of land.
22. The CCN holder has production and storage facilities for potable water adjacent to the northwest corner of the tract of land.
23. The CCN holder has an eight-inch water line that runs from its storage facility, across the western portion of the tract of land a distance of about 1,000 feet, to the subdivision.
24. The CCN holder's water facilities are capable of providing water service to approximately 136 additional connections.

25. The CCN holder does not have adequate capacity to provide water service to the 238 connections planned for the tract of land and would need to construct additional facilities to provide adequate water service to the tract of land.
26. The CCN holder has not committed or dedicated any facilities or lines to the tract of land for water service.
27. The CCN holder has no facilities or lines that provide water service to the tract of land.
28. The CCN holder has not performed any acts for or supplied anything to the tract of land for water service.

Sewer Service

29. The CCN holder does not provide actual sewer service to the tract of land.
30. The CCN holder provides retail sewer service to a subdivision adjacent to and south and west of the tract of land.
31. The CCN holder has a sewage treatment plant adjacent to the southeast corner of the tract of land.
32. The CCN holder has a sewage lift station located adjacent to the southwest corner of the most southern boundary of the tract of land
33. The CCN holder has a four-inch sewer force main that runs from the lift station through the tract of land along its southern boundary for approximately 400 feet to the treatment plant.
34. The CCN holder's sewer system is capable of serving an approximately 140 additional sewer connections.
35. The CCN holder does not have adequate capacity to provide sewer service to the 238 connections planned for the tract of land and would need to construct additional facilities and upgrade its sewer treatment plant to provide adequate sewer service to the tract of land.
36. The CCN holder has not committed or dedicated any facilities or lines to the tract of land for sewer service.
37. The CCN holder has no facilities or lines that provide sewer service to the tract of land.

38. The CCN holder has not performed any acts for or supplied anything to the tract of land for sewer service.

Map and Certificate

39. On September 25, 2020, Commission Staff filed its recommendation that included two certificates and two maps on which it identified the tract of land in relationship to the CCN holder's service area for water service and for sewer service.
40. On December 8, 2020, Commission Staff filed revised maps for the CCN holder's water and sewer service area.

III. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over the petition for expedited release under TWC §§ 13.254 and 13.2541.
2. The petitioner provided notice of the petition in compliance with 16 TAC § 24.245(h)(3)(F).
3. No opportunity for a hearing on a petition for expedited release is provided under TWC §§ 13.254 or 13.2541 or 16 TAC § 24.245(h)(7).
4. Petitions for expedited release filed under TWC §§ 13.254 and 13.2541 and 16 TAC § 24.245(h) are not contested cases.
5. Landowners seeking expedited release under TWC §§ 13.254 and 13.2541 and 16 TAC § 24.245(h) are required to submit a verified petition through a notarized affidavit, and the CCN holder may submit a response to the petition.
6. To obtain release under TWC § 13.2541(b), a landowner must demonstrate that the landowner owns a tract of land that is at least 25 acres, that the tract of land is located in a qualifying county, and that the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN.
7. The petitioner owns the tract of land, which is at least 25 acres, for which it seeks streamlined expedited release through the petition.
8. Harris County is a qualifying county under TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).

9. The tract of land is not receiving water service under TWC §§ 13.002(21) and 13.2541 and 16 TAC § 24.245(h), as interpreted in *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).
10. The tract of land is not receiving sewer service under TWC §§ 13.002(21) and 13.2541 and 16 TAC § 24.245(h), as interpreted in *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).
11. The petitioner is entitled under TWC § 13.2541(b) to the release of the tract of land from Aqua Texas's certificated service area under CCN number 13203.
12. The petitioner is entitled under TWC § 13.2541(b) to the release of the tract of land from Aqua Texas's certificated service area under CCN number 21065.
13. After the date of this Order, Aqua Texas has no obligation to provide retail water service to the petitioner's tract of land.
14. After the date of this Order, Aqua Texas has no obligation to provide retail sewer service to the petitioner's tract of land.
15. The Commission has no authority to decertify any facilities or equipment owned and operated by the CCN holder to provide retail water service or retail sewer service through the streamlined-expedited-release process under Texas Water Code § 13.2541(b).
16. The Commission processed the petition in accordance with the TWC and Commission rules.
17. Under TWC § 13.257(r) and (s), the CCN holder is required to record certified copies of its approved certificates and maps, along with a boundary description of its service areas, in the real property records of Harris County no later than the 31st day after the date the CCN holder receives this Order.
18. A retail public utility may not under TWC § 13.254(d) provide retail water service or retail sewer service to the public within the tract of land unless just and reasonable compensation under TWC § 13.254(g) has been paid to the CCN holder.

IV. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission releases the tract of land identified in the petition from the CCN holder's certificated service areas under CCN number 13203 and number 21065.
2. The Commission does not decerticate any of the CCN holder's equipment or facilities that lay on or under the petitioner's tract of land.
3. The Commission amends CCN number 13203 and number 21065 in accordance with this Order.
4. The Commission approves the maps filed by Commission Staff on December 8, 2020.
5. The Commission approves the certificates filed by Commission Staff on September 25, 2020.
6. The CCN holder must file in this docket proof of the recordings required by TWC § 13.257(r) and (s) within 45 of the date of this Order.
7. The proceeding to determine the amount of compensation to be awarded to the CCN holder, if any, commences with the filing of this Order in accordance with the schedule adopted in Order No. 2. Any decision on compensation will be made by a separate order.
8. The Commission denies all other motions and any other requests for general or specific relief not expressly granted by this Order.

Signed at Austin, Texas the ____ day of December 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER